FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4135 OF 2005

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B. P. Dharmadhikari, J.
Dated : 17th January, 2007.

Heard Advocate Shri Choube appearing for petitioner original appellant. The delay in moving application for setting aside abatement of Regular Civil Appeal has not been condoned by impugned order.

Advocate Shri Choube for petitioner contends that valid reasons for condoning delay were given and also evidence was adduced. He points out that the courts below have erroneously held that there was no oral evidence adduced by the petitioner.

However, I find that that is not the only reason given by the lower court. There was delay of about 4 years and 5 months. The appellate court has noticed that there were two suits and against common judgment delivered, in

one of the suits First Appeal No. 239 of 1983 was filed before this Court and in that appeal before High Court, present petitioner moved an application for condonation of delay on 10/11/1987, which was allowed by this court. It is, therefore, apparent that petitioner was aware of death of respondent and of requirement of bringing his legal heirs on record. There is absolutely no justification for not taking those steps in appeal filed before the lower court within time or within reasonable time from 10/11/1987. I, therefore, find that discretion exercised by the lower court is proper. There is no perversity or jurisdictional error.

Writ Petition is accordingly dismissed. No costs.

JUDGE

Diwale